

## 1 SENATE BILL NO. 694

## 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the House Committee for Courts of Justice

4 on \_\_\_\_\_)

5 (Patron Prior to Substitute--Senator Obenshain)

6 A BILL to amend and reenact §§ 15.2-1901, 25.1-100, 25.1-204, 25.1-230.1, 25.1-237, 25.1-245.1, 25.1-  
7 307, 25.1-308, 25.1-315, 25.1-318, 33.2-1016, 33.2-1018, 33.2-1019, 33.2-1022, and 33.2-1026  
8 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 3 of Title 25.1 a  
9 section numbered 25.1-319 and by adding a section numbered 33.2-1029.1; and to repeal § 33.2-  
10 1029 of the Code of Virginia, relating to eminent domain.

11 **Be it enacted by the General Assembly of Virginia:**

12 **1. That §§ 15.2-1901, 25.1-100, 25.1-204, 25.1-230.1, 25.1-237, 25.1-245.1, 25.1-307, 25.1-308, 25.1-**  
13 **315, 25.1-318, 33.2-1016, 33.2-1018, 33.2-1019, 33.2-1022, and 33.2-1026 of the Code of Virginia are**  
14 **amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title**  
15 **25.1 a section numbered 25.1-319 and by adding a section numbered 33.2-1029.1 as follows:**

16 **§ 15.2-1901. Condemnation authority.**

17 A. In addition to the authority granted to localities pursuant to any applicable charter provision or  
18 other provision of law, whenever a locality is authorized to acquire real or personal property or property  
19 interests for a public use, it may do so by exercise of the power of eminent domain, except as provided in  
20 subsection B.

21 B. A locality may acquire property or property interests outside its boundaries by exercise of the  
22 power of eminent domain only if such authority is expressly conferred by general law or special act.  
23 However, cities and towns shall have the right to acquire property outside their boundaries for the purposes  
24 set forth in § 15.2-2109 by exercise of the power of eminent domain. The exercise of such condemnation  
25 authority by a city or town shall not be construed to exempt the municipality from the provisions of  
26 subsection F of § 56-580.

27 C. Notwithstanding any other provision of law, general or special, no locality shall condition or  
28 delay the timely consideration, advancement, or approval of any application for or grant of any permit or  
29 other approval for any real property over which it enjoys jurisdiction for the purpose, expressed or implied,  
30 of allowing the ~~locality to condemn~~ condemnation or ~~otherwise acquire~~ acquisition of the property or to  
31 commence any process to consider whether to undertake condemnation or acquisition of the property.

32 **§ 25.1-100. Definitions.**

33 As used in this title, unless the context requires a different meaning:

34 "Appraisal" means a written statement independently and impartially prepared by a qualified  
35 appraiser setting forth an opinion of defined value of an adequately described property as of a specific  
36 date, supported by the presentation and analysis of relevant market information.

37 "Body determining just compensation" means a panel of commissioners empaneled pursuant to §  
38 25.1-227.2, jury selected pursuant to § 25.1-229, or the court if neither a panel of commissioners nor a  
39 jury is appointed or empaneled.

40 "Court" means the court having jurisdiction as provided in § 25.1-201.

41 "Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing  
42 of the petition pursuant to § 25.1-205, whichever occurs first.

43 "Freeholder" means any person owning an interest in land in fee, including a person owning a  
44 condominium unit.

45 "Land" means real estate and all rights and appurtenances thereto, together with the structures and  
46 other improvements thereon, and any right, title, interest, estate or claim in or to real estate.

47 "Locality" or "local government" means a county, city, or town, as the context may require.

48 "Lost access" means ~~a material impairment of direct~~ change of vehicular access to property, ~~a~~  
49 ~~portion of which has been taken or damaged as set out in subsection B of § 25.1-230.1. This definition of~~  
50 ~~the term "lost access" shall not diminish any existing right or remedy, and shall not create any new right~~  
51 ~~or remedy other than to allow the body determining just compensation to consider a change in access in~~  
52 ~~awarding just compensation~~ that is caused by a public use project for which the eminent domain power  
53 has been exercised against the property and which results in a diminution in the value of the property.

54 "Lost profits" means a loss of business profits, as defined in § 25.1-230.1, that is suffered as a  
55 result of a taking of the property on which a business or farm operation is located, subject to adjustment  
56 using generally accepted accounting principles consistently applied, from a business or farm operation for  
57 a period not to exceed three years from the later of (i) the date of valuation or (ii) the date the state agency  
58 or its contractor prevents the owner from using the land or any of the owner's other property rights are  
59 taken. The person claiming lost profits is entitled to compensation whether part of the property or the  
60 entire parcel of property is taken. In order to qualify for an award of lost profits, one of the following  
61 conditions shall be met: (a) the business is owned by the owner of the property taken, or by a tenant whose  
62 leasehold interest grants the tenant exclusive possession of substantially all the property taken, or (b) the  
63 farm operation is operated by the owner of the property taken, or by a tenant using for a farm operation  
64 the property taken, to the extent that the loss is determined and proven pursuant to subsection C of § 25.1-  
65 230.1. This definition of the term "lost profits" shall not create any new right or remedy or diminish any  
66 existing right or remedy other than to allow the body determining just compensation to consider lost profits  
67 in awarding just compensation if a person asserts a right to lost profits in a claim for compensation.

68 "Owner" means any person who owns property, provided that the person's ownership of the  
69 property is of record in the land records of the clerk's office of the circuit court of the county or city where  
70 the property is located. The term "owner" shall not include trustees or beneficiaries under a deed of trust,  
71 any person with a security interest in the property, or any person with a judgment or lien against the  
72 property. This definition of the term "owner" shall not affect in any way the valuation of property.

73 "Person" means any individual; firm; cooperative; association; corporation; limited liability  
74 company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver;  
75 trustee in bankruptcy or any other person acting in a fiduciary or representative capacity, whether  
76 appointed by a court or otherwise; club, society or other group or combination acting as a unit; the  
77 Commonwealth or any department, agency or instrumentality thereof; any city, county, town, or other  
78 political subdivision or any department, agency or instrumentality thereof; or any interstate body to which  
79 the Commonwealth is a party.

80 "Petitioner" or "condemnor" means any person who possesses the power to exercise the right of  
81 eminent domain and who seeks to exercise such power. The term "petitioner" or "condemnor" includes a  
82 state agency.

83 "Property" means land and personal property, and any right, title, interest, estate or claim in or to  
84 such property.

85 "State agency" means any (i) department, agency or instrumentality of the Commonwealth; (ii)  
86 public authority, municipal corporation, local governmental unit or political subdivision of the  
87 Commonwealth or any department, agency or instrumentality thereof; (iii) person who has the authority  
88 to acquire property by eminent domain under state law; or (iv) two or more of the aforementioned that  
89 carry out projects that cause persons to be displaced.

90 "State institution" means any (i) institution enumerated in § 23.1-1100 or (ii) state hospital or state  
91 training center operated by the Department of Behavioral Health and Developmental Services.

92 **§ 25.1-204. Effort to purchase required; prerequisite to effort to purchase or filing certificate.**

93 A. A condemnor shall not institute proceedings to condemn property until a bona fide but  
94 ineffectual effort to purchase from the owner the property sought to be condemned has been made.  
95 However, such effort shall not be required if the consent cannot be obtained because one or more of the  
96 owners (i) is a person under a disability or is otherwise unable to convey legal title to such property, (ii)  
97 is unknown, or (iii) cannot with reasonable diligence be found within this Commonwealth.

98 B. Such bona fide effort shall include delivery of, or attempt to deliver, a written offer to acquire  
99 accompanied by a written statement to the owner that explains the factual basis for the condemnor's offer.  
100 The written statement shall include a description of the public use for which it is necessary to acquire the  
101 owner's property and shall contain a certification that the acquisition has been reviewed by the condemnor  
102 for purposes of complying with § 1-219.1. The written offer shall be made upon the state agency's  
103 letterhead and shall be signed by an authorized employee of such state agency.

104 C. If the condemnor obtains an appraisal of the property pursuant to the provisions of § 25.1-417,  
105 such written statement shall include a complete copy of the appraisal of the property upon which such  
106 offer is based. If the condemnor obtains more than one appraisal, such written statement shall include a

107 copy of all appraisals obtained prior to making an offer to acquire or initiating negotiations for the real  
108 property.

109 D. Notwithstanding any provision of law to the contrary, a condemnor, prior to making an offer to  
110 acquire a fee simple interest in property by purchase or filing a certificate of take or certificate of deposit  
111 pursuant to Chapter 3 (§ 25.1-300 et seq.) or § 33.2-1019, shall (i) conduct or cause to be conducted an  
112 examination of title to the property in order to ascertain the identity of each owner of such property and  
113 to determine the nature and extent of such owner's interests in the property ~~and~~, which examination of  
114 title shall be for at least 60 years; (ii) provide to such owner or owners a copy of the report ~~of status of~~  
115 ~~title~~ showing the examination of title; and (iii) provide to such owner or owners a copy of all recorded  
116 instruments within the 60-year title history of such property, including all deeds of trust, releases, liens,  
117 deeds, or other instruments identified in the report.

118 E. A state agency's acquisition of real property in connection with any programs or projects  
119 pursuant to this title or Title 33.2 shall be conducted in accordance with the following provisions:

120 1. Before making an offer to acquire or initiating any related negotiations for real property, the  
121 state agency shall establish an amount which it believes to be just compensation therefor and shall make  
122 a prompt offer to acquire the property for the full amount so established. In no event shall such amount be  
123 less than the state agency's approved appraisal of the fair market value of such property, if such an  
124 appraisal is required, or the current assessed value of such property for real estate tax purposes, unless the  
125 property has physically changed in a material and substantial way since the current assessment date such  
126 that the real estate tax assessment no longer represents a fair valuation of the property, when the entire  
127 parcel for which the assessment is made is to be acquired, whichever is greater. Any decrease or increase  
128 in the fair market value of real property prior to the date of valuation caused by the public improvement  
129 for which such property is acquired, or by the likelihood that the property would be acquired for such  
130 improvement, other than that due to physical deterioration within the reasonable control of the owner,  
131 shall be disregarded in determining the compensation for the property. The state agency concerned shall  
132 provide the owner of real property to be acquired with a written statement of, and summary of the basis  
133 for, the amount it established as just compensation, and, if an appraisal is required or obtained, such written

134 statement and summary shall include a complete copy of all appraisals of the real property to be acquired  
135 that the state agency obtained prior to making an offer to acquire or initiating negotiations for the real  
136 property. The state agency shall provide its written statement of the amount it established as just  
137 compensation on its letterhead, which shall be signed by an authorized employee of such state agency.  
138 Where appropriate, the just compensation for the real property acquired and for damages to remaining real  
139 property shall be separately stated.

140 2. No owner shall be required to surrender possession of real property before the state agency pays  
141 the agreed purchase price, or deposits with the state court in accordance with applicable law, for the benefit  
142 of the owner, (i) an amount not less than the state agency's approved appraisal of the fair market value of  
143 such property, if such an appraisal is required, or the current assessed value of such property for real estate  
144 tax purposes, unless the property has physically changed in a material and substantial way since the current  
145 assessment date such that the real estate tax assessment no longer represents a fair valuation of the  
146 property, when the entire parcel for which the assessment is made is to be acquired, whichever is greater,  
147 or (ii) the amount of the award of compensation in the condemnation proceeding for such property.

148 F. Nothing in this section shall make evidence of tax assessments admissible as proof of value in  
149 an eminent domain proceeding.

150 **§ 25.1-230.1. Lost access and lost profits.**

151 A. For purposes of this section:

152 "Business" shall have the same meaning as set forth in § 25.1-400.

153 "Business profit" means the average net income for federal income tax purposes for the three years  
154 immediately prior to the later of (i) the date of valuation or (ii) the date the state agency or its contractor  
155 prevents the owner from using the land or any of the owner's other property rights are taken, for a business  
156 or farm operation located on the property taken.

157 ~~"Direct access" means ingress or egress on or off a public road, street, or highway at a location~~  
158 ~~where the property adjoins that road, street, or highway.~~

159 "Farm operation" shall have the same meaning as set forth in § 25.1-400.

160 B. The body determining just compensation shall include in its determination of damage to the  
161 residue any loss in market value of the remaining property from lost access ~~caused by the taking or~~  
162 ~~damaging of the property.~~ The body determining just compensation shall ascertain any reduction in value  
163 for lost access, if any, that may accrue to the residue as provided in subsection A of § 25.1-230, ~~by reason~~  
164 ~~of the taking and use by the petitioner. If such peculiar benefit or enhancement in value shall exceed the~~  
165 ~~reduction in value, there shall be no recovery against the landowner for such excess. The body determining~~  
166 ~~just compensation may not consider an injury or benefit that the property owner experiences in common~~  
167 ~~with the general community, including off-site circuitry of travel and diversion of traffic, arising from an~~  
168 ~~exercise of the police power. The body determining just compensation shall ensure that any compensation~~  
169 ~~awarded for lost access shall not be duplicated in the compensation otherwise awarded to the owner of the~~  
170 ~~property taken or damaged.~~

171 C. The body determining just compensation shall include in its determination of just compensation  
172 lost profits to the owner of a business or farm operation conducted on the property taken only if the owner  
173 proves with reasonable certainty the amount of the loss and that the loss is directly and proximately caused  
174 by the taking of the property through the exercise of eminent domain and the following conditions are  
175 met:

176 1. The loss cannot be reasonably prevented by a relocation of the business or farm operation, or  
177 by taking steps and adopting procedures that a reasonably prudent person would take and adopt;

178 2. The loss will not be included in relocation assistance provided pursuant to Chapter 4 (§ 25.1-  
179 400 et seq.);

180 3. Compensation for the loss will not be duplicated in the compensation otherwise awarded to the  
181 owner of the property taken or damaged; and

182 4. The loss shall be determined in accordance with generally accepted accounting principles  
183 applied on a consistent basis.

184 D. Any and all liability for lost access shall be established and made a part of the award of just  
185 compensation for damage to the residue of the property taken or damaged, and any and all liability for lost  
186 profits shall be set forth specifically in the award. In a partial acquisition, in the event that the owner of

187 the property being condemned and the owner of the business or farm operation claiming lost profits are  
188 the same, then any enhancement or peculiar benefit shall be offset against both damage to the residue and  
189 lost profits.

190 E. It shall not be a requirement of any bona fide effort to purchase the property pursuant to § 25.1-  
191 204 or 33.2-1001 that the petitioner include any liability for lost profits in a written offer to purchase the  
192 property.

193 F. In any proceeding in which the owner of a business or farm operation seeks to recover lost  
194 profits, the owner shall provide the condemning authority with all federal income tax returns, if any,  
195 relating to the business or farm operation for which the owner seeks lost profits for a period of three years  
196 prior to the later of (i) the valuation date or (ii) the date the state agency or its contractor prevents the  
197 owner from using the land or any of the owner's other property rights are taken, and for each year thereafter  
198 during the pendency of the condemnation proceeding. The condemning authority shall not divulge the  
199 information provided pursuant to this subsection except in connection with the condemnation proceeding.  
200 Additionally, unless already named in the petition for condemnation, the owner may intervene in the  
201 proceeding by filing a motion to intervene accompanied by a petition for intervention setting forth the  
202 basis for the lost profits claim under this chapter. Proceedings to adjudicate lost profits may be bifurcated  
203 from the other proceedings to determine just compensation if the lost profits claim period will not expire  
204 until one year or later from the date of the filing of the petition for condemnation, but such bifurcation  
205 shall not prevent the entry of an order confirming indefeasible title to the land interests acquired by the  
206 condemning authority.

207 ~~G. Nothing in this section is intended to provide for compensation for inverse condemnation claims~~  
208 ~~for temporary interference with or interruption of a business or farm operation other than that which is~~  
209 ~~directly and proximately caused by a taking or damaging of property through the exercise of eminent~~  
210 ~~domain.~~

211 **§ 25.1-237. Payment of compensation and damages into court; vesting of title.**

212 Upon the return of the report of the body determining just compensation, and the confirmation,  
213 alteration, or modification thereof in the manner provided in this chapter, the sum so ascertained by the

214 court as compensation and damages, if any, to the property owners may be paid into court. The clerk shall  
215 deposit such funds to the credit of the court in an account of a type that bears interest. Upon paying such  
216 sum into court, title to the property and rights condemned shall vest in the petitioner to the extent prayed  
217 for in the petition, unless such title shall have already vested in the petitioner in a manner otherwise  
218 provided by law. The petitioner or its agent shall have the right to enter and construct its works or  
219 improvements upon or through the property described in its petition.

220 **§ 25.1-245.1. Costs.**

221 A. Except as otherwise provided in this chapter, all costs of the proceeding in the trial court that  
222 are fixed by statute shall be taxed against the condemnor.

223 B. ~~The court may in its discretion tax as a cost a fee, not to exceed \$1,000,~~ shall order the  
224 condemnor to pay to the owner reasonable costs and fees, not to exceed \$7,500, unless the court approves  
225 a higher amount, for a survey for the ~~landowner~~ owner.

226 C. If an owner whose property is taken by condemnation under this title or under Title 33.2 is  
227 awarded at trial, as compensation for the taking of or damage to his real property, an amount that is 25  
228 percent or more greater than the amount of the condemnor's initial written offer made pursuant to § 25.1-  
229 204, the court may order the condemnor to pay to the owner those (i) reasonable costs, other than attorney  
230 fees, and (ii) reasonable fees and travel costs, including reasonable appraisal and engineering fees incurred  
231 by the owner, for up to three experts or as many experts as are called by the condemnor, whichever is  
232 greater, who testified at trial.

233 D. All costs on appeal shall be assessed and assessable in the manner provided by law and the  
234 Rules of Court as in other civil cases.

235 E. The requirements of this section shall not apply to those condemnation actions initiated by a  
236 public service company, public service corporation, railroad pursuant to the delegation of the power of  
237 eminent domain granted in Title 56, or government utility corporation, as defined by § 1-219.1, involving  
238 easements adjudged at less than \$10,000.

239 F. This section is to be liberally construed to effect its purpose of ensuring that owners receive the  
240 full measure of just compensation to which they are constitutionally entitled, without that amount being  
241 reduced by the costs of asserting their constitutional right to just compensation.

242 **§ 25.1-307. Content of certificates; recordation of certificates.**

243 A. A certificate shall set forth the description of the property being taken or damaged, and the  
244 owner or owners, if known, of such property. If a temporary construction easement is being acquired, the  
245 certificate shall set forth the calendar date on which it shall expire if that date is known to the condemnor.  
246 If the condemnor certifies that such date is not known, at such time the condemnor ascertains the date, the  
247 condemnor shall file certification of the information as provided by subsection B and shall simultaneously  
248 provide the landowner or the landowner's counsel, if any, a copy of such certification.

249 B. The authorized condemnor shall record a certificate of take or a certificate of deposit in the  
250 clerk's office of the court where deeds are recorded. The clerk shall record the certificate in the deed book  
251 and index it in the names of both (i) the person or persons who owned the land before the recordation of  
252 the certificate and (ii) the authorized condemnor.

253 **§ 25.1-308. Effect of recordation of certificate; transfer of title or interest in property.**

254 A. Upon recordation of a certificate:

- 255 1. The interest or estate of the owner of the property described therein shall terminate;  
256 2. The title to such property shall be vested in the authorized condemnor;  
257 3. The owner shall have such interest or estate in the funds deposited with the court or represented  
258 by the certificate of deposit as the owner had in the property taken or damaged; and  
259 4. All liens by deed of trust, judgment or otherwise upon such property shall be transferred to such  
260 funds.

261 B. The title in the authorized condemnor shall be defeasible until (i) the authorized condemnor and  
262 such owner reach an agreement as provided in § 25.1-317, or (ii) the compensation for the taking or  
263 damage to the property is determined by condemnation proceedings as provided in § 25.1-313.

264 C. If funds have been deposited with the court under a certificate of take, the clerk shall deposit  
265 the funds so paid to the credit of the court in an account of a type that bears interest.

266           **§ 25.1-315. Awards in greater amounts than deposit; interest.**

267           A. If the amount of an award in a condemnation proceeding is greater than that deposited with the  
268 court or represented by a certificate of deposit, the excess amount, together with interest accrued on such  
269 excess amount, shall be paid into court for the person or persons entitled thereto. The clerk shall deposit  
270 such funds to the credit of the court in an account of a type that bears interest.

271           B. Interest shall accrue on the excess amount at not less than the judgment rate of interest as set  
272 forth in § 8.01-382, computed from the date of such deposit to the date of payment into court and be paid  
273 into court for the person or persons entitled thereto. However, any interest that accrued before July 1,  
274 1970, shall be paid at the rate of five percent, and interest accruing thereafter and prior to July 1, 1981,  
275 shall be paid at the rate of six percent, and any interest accruing thereafter and prior to July 1, 1994, shall  
276 be paid at the rate of eight percent.

277           **§ 25.1-318. Petition by owner for determination of just compensation.**

278           A. The owner of property that an authorized condemnor has entered and taken possession of, or  
279 taken defeasible title of, pursuant to the provisions of this chapter may petition the circuit court of the  
280 locality in which the greater portion of the property lies for the appointment of commissioners or the  
281 empanelment of a jury to determine just compensation for the property taken and damages done, if any,  
282 to such property, as provided in Chapter 2 (§ 25.1-200 et seq.) if (i) the owner and the authorized  
283 condemnor have not reached an agreement as to compensation and damages, if any, and (ii) the authorized  
284 condemnor:

285           1. Has not completed the construction of the contemplated improvements upon the property after  
286 a reasonable time for such construction has elapsed; or

287           2. Has not instituted condemnation proceedings within:

288           a. Sixty days after completion of the construction of the contemplated improvements upon the  
289 property;

290           b. One hundred eighty days after the authorized condemnor has entered upon and taken possession  
291 of the property, regardless of whether the construction of the contemplated improvements has been  
292 completed; or

293 c. One hundred eighty days after the recordation of a certificate.

294 B. A copy of such petition shall be served upon the authorized condemnor at least 10 days before  
295 it is filed in the court. The authorized condemnor shall file an answer thereto within five days after the  
296 filing of the petition. If the court finds that the conditions prerequisite for such appointment as provided  
297 in subsection A are satisfied, the court shall appoint commissioners or empanel a jury, as requested in the  
298 owner's petition, to ascertain the amount of compensation to be paid for the property taken and damages  
299 done, if any. The proceedings shall thereafter be governed by the procedure prescribed by Chapter 2 (§  
300 25.1-200 et seq.) insofar as the same may be applicable, except that the owner shall have the burden of  
301 proceeding with the evidence as to just compensation. The authorized condemnor shall reimburse the  
302 owner for his fees and costs charged by a lienholder, including filing fees and attorney fees, incurred in  
303 filing the owner's petition.

304 **§ 25.1-319. Certificates of completion.**

305 Upon completion of construction of any public use project for which a portion of private property  
306 was acquired by certificate, the condemnor shall, within 90 days of completion of construction, record a  
307 certificate of completion in the clerk's office of the court where deeds are recorded. Such certificate of  
308 completion shall state that construction of the public use project for which the property was taken is  
309 complete and any temporary acquisitions have terminated. The clerk shall record the certificate of  
310 completion in the deed book and index in it the names of both (i) the person or persons who own the land  
311 at the time of the recordation of the certificate of completion and (ii) the condemnor.

312 **§ 33.2-1016. Procedure in general; suits in name of Commissioner of Highways; survival;**  
313 **validation of suits; notice of filing.**

314 A. Proceedings for condemnation under this article shall be instituted and conducted in accordance  
315 with the procedures provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, except that the provisions of  
316 §§ 33.2-1018 through ~~33.2-1029~~ 33.2-1029.1 shall be applicable to such proceedings.

317 B. All suits shall be instituted and conducted in the name of the Commissioner of Highways as  
318 petitioner without naming the individual who may be such Commissioner of Highways or acting  
319 Commissioner of Highways. In the event of the death, removal, retirement, or resignation of the

320 Commissioner of Highways or acting Commissioner of Highways, the suit shall automatically survive to  
321 a successor Commissioner of Highways or acting Commissioner of Highways. All suits heretofore filed  
322 in accordance with the provisions of this section are hereby ratified, validated, and confirmed.

323 C. In addition to any other notices required to be served pursuant to this section, in any proceeding  
324 instituted by the Commissioner of Highways under this title, a copy of the notice of the filing of the  
325 petition also shall be served, in the same manner as such notice is served upon owners, upon any person  
326 owning structures or improvements for which an outdoor advertising permit has been issued by the  
327 Commissioner of Highways pursuant to § 33.2-1208.

328 **§ 33.2-1018. Authority to take possession and title to property before or during**  
329 **condemnation; purpose and intent of provisions.**

330 In addition to the exercise of the power of eminent domain prior to the entry upon land being  
331 condemned, as provided in this article, the Commissioner of Highways is authorized to acquire title and  
332 to enter upon and take possession of such property and rights-of-way, for the purposes set out in § 33.2-  
333 1001, as the Commissioner of Highways may deem necessary, and proceed with the construction of such  
334 highway, such taking to be made pursuant to §§ 33.2-1019 through ~~33.2-1029~~ 33.2-1029.1.

335 It is the intention of this article to provide that such property and rights-of-way may, in the  
336 discretion of the Commissioner of Highways, be condemned during or after the construction of the  
337 highway, as well as prior thereto, and to direct the fund out of which the judgment of the court in  
338 condemnation proceedings shall be paid, and to provide that in all other respects the provisions of this  
339 article shall apply, whether the property and rights-of-way are condemned before, during, or after the  
340 construction of the highway. However, the authorities constructing such highway under the authority of  
341 this article shall use diligence to protect growing crops and pastures and to prevent damage to any property  
342 not taken. So far as possible all rights-of-way shall be acquired or contracted for before any condemnation  
343 is resorted to.

344 **§ 33.2-1019. Payments into court or filing certificate of deposit before entering upon land.**

345 A. Before entering upon or taking possession of land pursuant to § 33.2-1018, the Commissioner  
346 of Highways shall either:

347 1. Pay into the court wherein condemnation proceedings are pending or are to be instituted such  
348 sum as is required by subsection B; or

349 2. File with the court wherein condemnation proceedings are pending or are to be instituted a  
350 certificate of deposit issued by the Commissioner of Highways for such sum as is required by subsection  
351 B, which shall be deemed and held for the purpose of this chapter to be payment into the custody of such  
352 court.

353 B. The amount to be paid into the court as provided in subdivision A 1 or represented by a  
354 certificate of deposit as provided in subdivision A 2 shall be the amount that the Commissioner of  
355 Highways estimates to be the fair value of the land taken, or interest therein sought, and damage done,  
356 which estimate shall be based on a bona fide appraisal if required by § 25.1-417; however, such estimate  
357 shall not be less than the current assessed value of the land for real estate tax purposes, unless the property  
358 has physically changed in a material and substantial way since the current assessment date such that the  
359 real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for  
360 which the assessment has been made is to be acquired.

361 C. If the Commissioner of Highways makes a payment into court as provided in subdivision A 1,  
362 the court shall also record a certificate of take pursuant to § 33.2-1021. The clerk shall deposit such funds  
363 to the credit of the court in an account of a type that bears interest.

364 D. Payment against a certificate of deposit, when ordered by the court named therein, shall be paid  
365 by the Commissioner of Highways.

366 E. The Commissioner of Highways shall not be permitted to force relocation on improved owner-  
367 occupied property until the owner is permitted to withdraw the funds represented by the certificate filed  
368 with the court. However, if the owner refuses to withdraw the funds represented by the certificate filed  
369 with the court or if the Commissioner of Highways reasonably believes that the owner does not possess  
370 clear title to the property being taken, that ownership of the property is disputed, or that certain owners  
371 cannot be located, the Commissioner of Highways may petition the court to establish that the owner does  
372 not possess clear title, that the ownership of the property is in dispute, that certain owners cannot be

373 located, or that the owner has refused to withdraw the funds represented by the certificate filed with the  
374 court, and request that the Commissioner of Highways be given authority to force relocation.

375 F. Nothing in this section shall make evidence of tax assessments admissible as proof of value in  
376 an eminent domain proceeding.

377 **§ 33.2-1022. Certificates to describe land and list owner.**

378 The certificate shall set forth the description of the land or interest therein being taken or damaged  
379 and, if known, the owner. If a temporary construction easement is being acquired, the certificate shall set  
380 forth the calendar date on which it shall expire.

381 **§ 33.2-1026. Awards in greater or lesser amounts than deposit; interest.**

382 A. If the amount of an award in a condemnation proceeding is greater than that deposited with the  
383 court or represented by a certificate of deposit, the excess amount, together with interest accrued on such  
384 excess amount, shall be paid into court for the person entitled thereto. The clerk shall deposit such funds  
385 to the credit of the court in an account of a type that bears interest.

386 B. Interest shall accrue on the excess amount at not less than the judgment rate of interest as set  
387 forth in § 8.01-382, computed from the date of such deposit to the date of payment into court, and shall  
388 be paid into court for the person or persons entitled thereto. However, any (i) interest accruing after June  
389 30, 1970, and prior to July 1, 1981, shall be paid at the rate of six percent; (ii) interest accruing after June  
390 30, 1981, and prior to July 1, 1994, shall be paid at the rate of eight percent; and (iii) interest accruing  
391 after June 30, 1994, and prior to July 1, 2003, shall be paid at the general account composite rate, compiled  
392 by the Department of the Treasury for the month in which the award is rendered.

393 C. If the amount of an award in a condemnation proceeding is less than that deposited with the  
394 court or represented by a certificate of deposit, and the person or persons entitled thereto have received a  
395 distribution of the funds pursuant to § 33.2-1023, the Commissioner of Highways shall recover (i) the  
396 amount of such excess and (ii) interest on such excess at the rate of interest established pursuant to §  
397 6621(a)(2) of the Internal Revenue Code of 1954, as amended. If any person has been paid a greater sum  
398 than that to which he is entitled as determined by the award, judgment shall be entered for the  
399 Commissioner of Highways against such person for the amount of such excess and interest. However, the

400 Commissioner of Highways shall not be entitled to recover the amount of such excess and interest in the  
401 event the Commissioner of Highways acquired, by virtue of the certificate, an entire parcel of land  
402 containing a dwelling, multiple-family dwelling, or building used for commercial purposes at the time of  
403 initiation of negotiations for the acquisition of such property.

404 **§ 33.2-1029.1. Petition by owner for determination of just compensation.**

405 A. The owner of property that the Commissioner of Highways has entered and taken position of,  
406 or taken defeasible title of, pursuant to the provisions of this chapter may petition the circuit court of the  
407 locality in which the greater portion of the property lies for the appointment of commissioners or the  
408 empanelment of a jury to determine just compensation for the property taken and damage done, if any, to  
409 such property, as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 if (i) the owner and the  
410 Commissioner of Highways have not reached an agreement as to compensation and damages, if any, and  
411 (ii) the Commissioner of Highways:

412 1. Has not completed the construction of the contemplated improvements upon the property after  
413 a reasonable time for such construction has elapsed; or

414 2. Has not instituted condemnation proceedings within:

415 a. Sixty days after completion of the construction of the contemplated improvements upon the  
416 property;

417 b. One hundred and eighty days after the Commissioner of Highways has entered upon and taken  
418 possession of the property, regardless of whether the construction of the contemplated improvements has  
419 been completed; or

420 c. One hundred and eighty days after the recordation of a certificate.

421 B. A copy of such petition shall be served on the Commissioner of Highways at least 10 days  
422 before it is filed in the court. The Commissioner of Highways shall file an answer within five days after  
423 the filing of the petition. If the courts finds that the conditions prerequisite for such appointment as  
424 provided in subsection A are satisfied, the court shall appoint commissioners or empanel a jury, as  
425 requested in the owner's petition, to ascertain the amount of compensation to be paid for the property taken  
426 and damages done, if any. The proceedings shall thereafter be governed by the procedures prescribed in

427 Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 insofar as they may be applicable, except that the owner shall  
428 have the burden of proceeding with the evidence as to just compensation. The Commissioner of Highways  
429 shall reimburse the owner for his fees and costs, including filing fees and attorney fees, incurred in filing  
430 the owner's petition.

431 **2. That § 33.2-1029 of the Code of Virginia is repealed.**

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